

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

UNITED STATES OF AMERICA, §  
§  
*Plaintiff*, §  
§  
v. § CASE NO. 7:19-cv-405  
§  
12.559 ACRES OF LAND, MORE OR §  
LESS, SITUATE IN HIDALGO §  
COUNTY, STATE OF TEXAS; AND §  
GERARDO MARTINEZ, ET AL., §  
§  
§  
*Defendants.* §

---

**COMPLAINT IN CONDEMNATION**

---

1. This is a civil action brought by the United States of America at the request of the Secretary of the Department of Homeland Security, through the Acquisition Program Manager, Wall Program Management Office, U.S. Border Patrol Program Management Office Directorate, U.S. Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security, for the taking of property under the power of eminent domain through a Declaration of Taking, and for the determination and award of just compensation to the owners and parties in interest.

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338.

3. The interest in property taken herein is under and in accordance with the authority set forth in Schedule "A."

4. The public purpose for which said interest in property is taken is set forth in Schedule "B."

5. The legal description and map or plat of land in which certain interests are being acquired by the filing of this Complaint, pursuant to the Declaration of Taking, are set forth in Schedules "C" and "D."

6. The interest being acquired in the property described in Schedules "C" and "D" is set forth in Schedule "E."

7. The amount of just compensation estimated for the property interest being acquired is set forth in Schedule "F."

8. The names and addresses of known parties having or claiming an interest in said acquired property are set forth in Schedule "G."

9. Local and state taxing authorities may have or claim an interest in the property by reason of taxes and assessments due and eligible.

WHEREFORE, Plaintiff requests judgment that the interest described in Schedule "E" of the property described in Schedules "C" and "D" be condemned, and that just compensation for the taking of said interest be ascertained and awarded, and for such other relief as may be lawful and proper.

Respectfully submitted,

**RYAN K. PATRICK**  
United States Attorney  
Southern District of Texas

By: *s/ N. Joseph Unruh*  
**N. JOSEPH UNRUH**  
Assistant United States Attorney  
Southern District of Texas No. 1571957  
Texas Bar No. 24075198  
1701 W. Bus. Hwy. 83, Suite 600  
McAllen, TX 78501  
Telephone: (956) 618-8010  
Facsimile: (956) 618-8016  
E-mail: Neil.Unruh@usdoj.gov

# **SCHEDULE**

# **A**

**SCHEDULE A**

**AUTHORITY FOR THE TAKING**

The property is taken under and in accordance with 40 U.S.C. §§ 3113 and 3114, which authorize the condemnation of land and the filing of a Declaration of Taking; the Act of Congress approved September 30, 1996, as Public Law 104-208, Division C, Section 102, 110 Stat. 3009-546, 3009-554-55, as amended and codified at 8 U.S.C. § 1103(b) & note; and the Act of Congress approved March 23, 2018, as Public Law 115-141, div. F, tit. II, 132 Stat. 348, which appropriated the funds that shall be used for the taking.

# **SCHEDULE**

# **B**

**SCHEDULE B**

**PUBLIC PURPOSE**

The public purpose for which said property is taken is to construct, install, operate, and maintain roads, fencing, vehicle barriers, security lighting, cameras, sensors, and related structures designed to help secure the United States/Mexico border within the State of Texas.

# **SCHEDULE**

# **C**

## **SCHEDULE C**

### **LEGAL DESCRIPTION**

Hidalgo County, Texas

Tract: RGV-WSL-8002

Owner: Gerardo Martinez, *et al.*

Acres: 12.559

As identified in the Gift Warranty Deed, Document #: 2014-2568072, recorded on December 3, 2014 in the deed records of Hidalgo County:

**Being** a 12.559 acre (547.070.04 square feet) parcel of land, being out of the Juan José Ynojosa de Ballí Survey, Abstract No. 54, Hidalgo County, Texas, being out of Lot 5, Block 72 and Lot 8, Block 73 of Capisallo District Subdivision recorded in Volume P, Page 227, Map Records of Hidalgo County, Texas, being out of a called 31 acre tract conveyed to Gerardo Martinez by Gift Warranty Deed recorded in Instrument No. 2014-2568072, Official Records of Hidalgo County, Texas (“Tract Three”) and being out of a tract of land conveyed to Gerardo Martinez by Gift Warranty Deed recorded in Instrument No. 2014-2568072, Official Records of Hidalgo County, Texas (“Tract Five”), said parcel of land being more particularly described by metes and bounds as follows;

**Beginning** at a set 5/8” rebar with a “MDS” aluminum disk capped survey marker stamped with the following description: “POC RGV-WSL-8000 8002”, said point being in the southwest line of a called 14.35 acre tract conveyed to Hidalgo & Cameron Counties Water Control & Improvement District No. 9 by Deed recorded in Volume 314, Page 62, Deed Records of Hidalgo County, Texas, said point being at the north corner of Martinez “Tract Five”, the southeast corner of a called 135.1 acre tract conveyed to Hidalgo & Cameron Counties Water Control & Improvement District No. 9 by Warranty Deed recorded in Volume 443, Page 567, Deed Records of Hidalgo County, Texas, the northwest corner of a called 15.43 acre river levee right-of-way conveyed to the United States of America by Easement Deed recorded in Volume 420, Page 594, Deed Records of Hidalgo County, Texas (“Tract No. 1”) and the northeast corner of a called 2.68 acre river levee right-of-way conveyed to the United States of America by Easement Deed recorded in Volume 420, Page 596, Deed Records of Hidalgo County, Texas (“Tract No.1”), said point having the coordinates of N=16548982.198, E=1179447.651;

**Thence:** S 21-34-00 E (Southeasterly, Record), continuing along the southwest line of the 14.35 acre tract, the northeast line of Martinez “Tract Five”, the southwest line of the 15.43 acre river levee right-of-way and the northeast line of the 2.68 acre river levee right-of-way, passing at 199.98’ the southeast corner of the 2.68 acre river levee right-of-way and the southwest corner of the 15.43 acre river levee right-of-way, continuing for a total distance of 244.07’ to a set 5/8” rebar with a “MDS” aluminum disk capped survey marker stamped with the following description: “RGV-WSL-8000-48=8002-2” for the southeast

corner of Tract RGV-WSL-8002, said point being in the southwest line of the 14.35 acre tract and the northeast line of Martinez "Tract Five";

**Thence:** S 68-18-46 W, departing the southwest line of the 14.35 acre tract, over and across Martinez "Tract Five", passing at 583.77' the southwest line of Martinez "Tract Five" and the northeast line of the 31 acre tract, passing at 641.39' the east line of a called 8.06 acre river levee right-of-way conveyed to the United States of America by Easement Deed recorded in Volume 425, Page 16, Deed Records of Hidalgo County, Texas ("Tract No. 4"), continuing for a total distance of 770.98' to a set 5/8" rebar with a "MDS" aluminum disk capped survey marker stamped with the following description: "RGV-WSL-8002-3" for the south corner of Tract RGV-WSL-8002, said point being within the 31 acre tract and the 8.06 acre river levee right-of-way;

**Thence:** N 55-59-00 W, over and across the 31 acre tract and the 8.06 acre river levee right-of-way, passing at 635.01' the west line of the 8.06 acre river levee right-of-way, continuing for a total distance of 1186.23' to a set 5/8" rebar with a "MDS" aluminum disk capped survey marker stamped with the following description: "RGV-WSL-8001-1=8002-4" for the southwest corner of Tract RGV-WSL-8002, said point being in the west line of the 31 acre tract and the east line of a called 49.6 acre tract conveyed to Fuller Farms by Warranty Deed recorded in Instrument No. 1971-19289, Official Records of Hidalgo County, Texas ("Tract II");

**Thence:** N 00-50-00 W, with the west line of the 31 acre tract and the east line of the 49.6 acre tract, passing at 110.90' the southwest corner of a called 0.64 acre river levee right-of-way conveyed to the United States of America by Easement Deed recorded in Volume 425, Page 16, Deed Records of Hidalgo County, Texas ("Tract No. 3") and the southeast corner of a called 3.85 acre river levee right-of-way conveyed to the United States of America by Easement Deed recorded in Volume 434, Page 554, Deed Records of Hidalgo County, Texas ("Tract No. 1"), passing at 171.71' the northwest corner of the 0.64 acre river levee right-of-way and the southwest corner of a called 4.54 acre river levee right-of-way conveyed to the United States of America by Easement Deed recorded in Volume 425, Page 16, Deed Records of Hidalgo County, Texas ("Tract No. 2"), continuing for a total distance of 355.61' to northwest corner of the 31 acre tract and southwest corner of Hidalgo & Cameron Counties Water Control & Improvement District No. 9, 11.79 acres recorded in Volume 443, Page 568 Deed Records Hidalgo County, Texas, and east line of 49.6 acre tract;

**Thence:** departing the east line of the 3.85 acre river levee right-of-way, east line of 49.6 acre tract, with north line of 31 acre tract and south line 11.79 acre tract the following courses and distances:

- S 56-06-00 E, a distance of 785.10' to a point;
- N 33-54-00 E, a distance of 50.00' to a point;
- S 56-06-00 E, a distance of 340.00' to a point;
- S 33-54-00 W, a distance of 50.00' to a point;

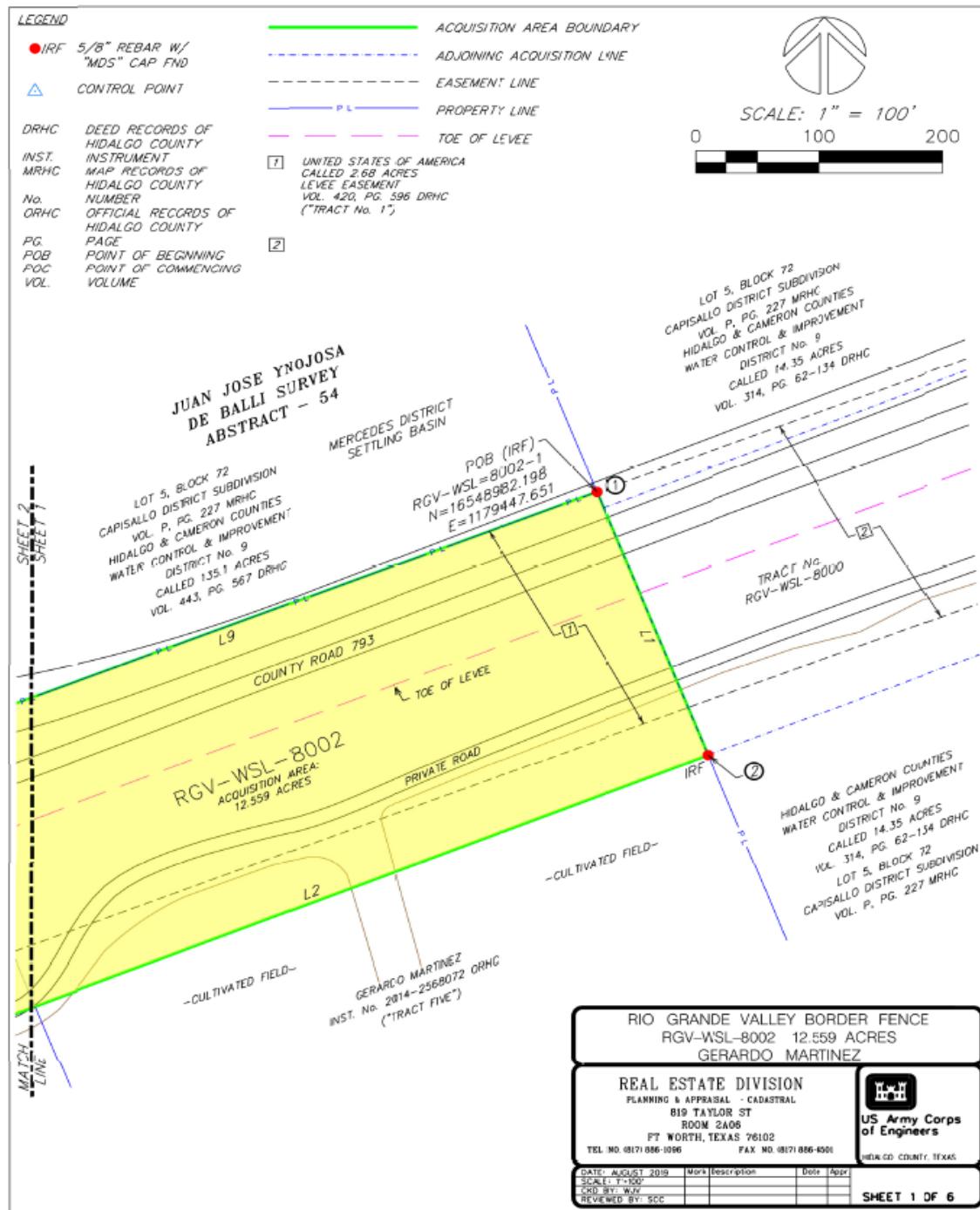
- S 56-06-00 E, a distance of 164.90' to a point for southeast corner of 11.79 acre tract, southwest corner of 135.1 acre tract, northeast corner of a 31 acre tract and northwest corner of Martinez "Tract Five";

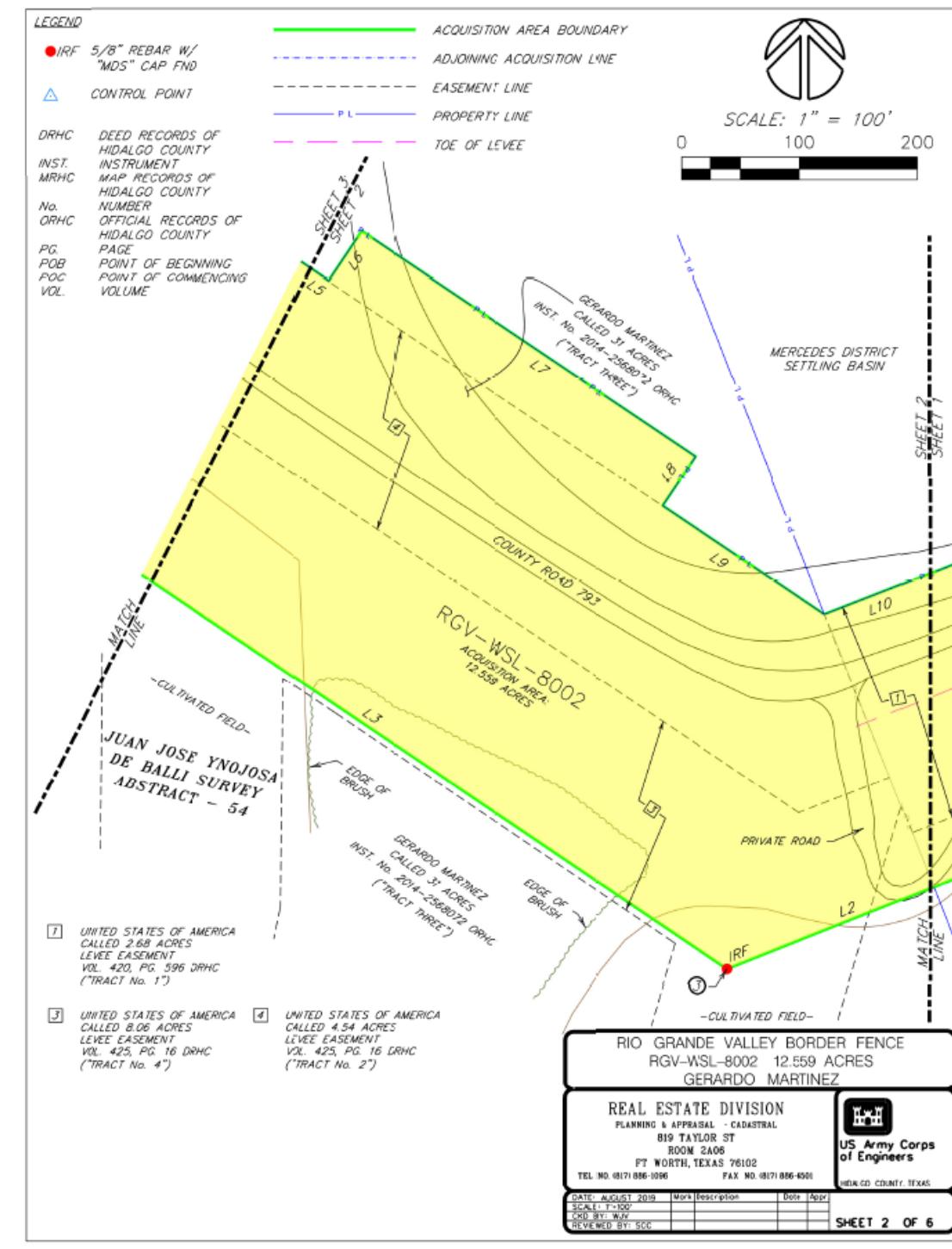
**Thence:** N 68-42-15 E, along north line of Martinez "Tract Five" and south line of 135.1 acre tract a distance of 581.38' to the **Place of Beginning**.

Note: All bearings, distances, and coordinates are referenced to the Texas State Plane Coordinate System, South Zone grid (SPCS 4205) NAD83. Values may be converted to ground values using a combined scale factor of 1.000040000.

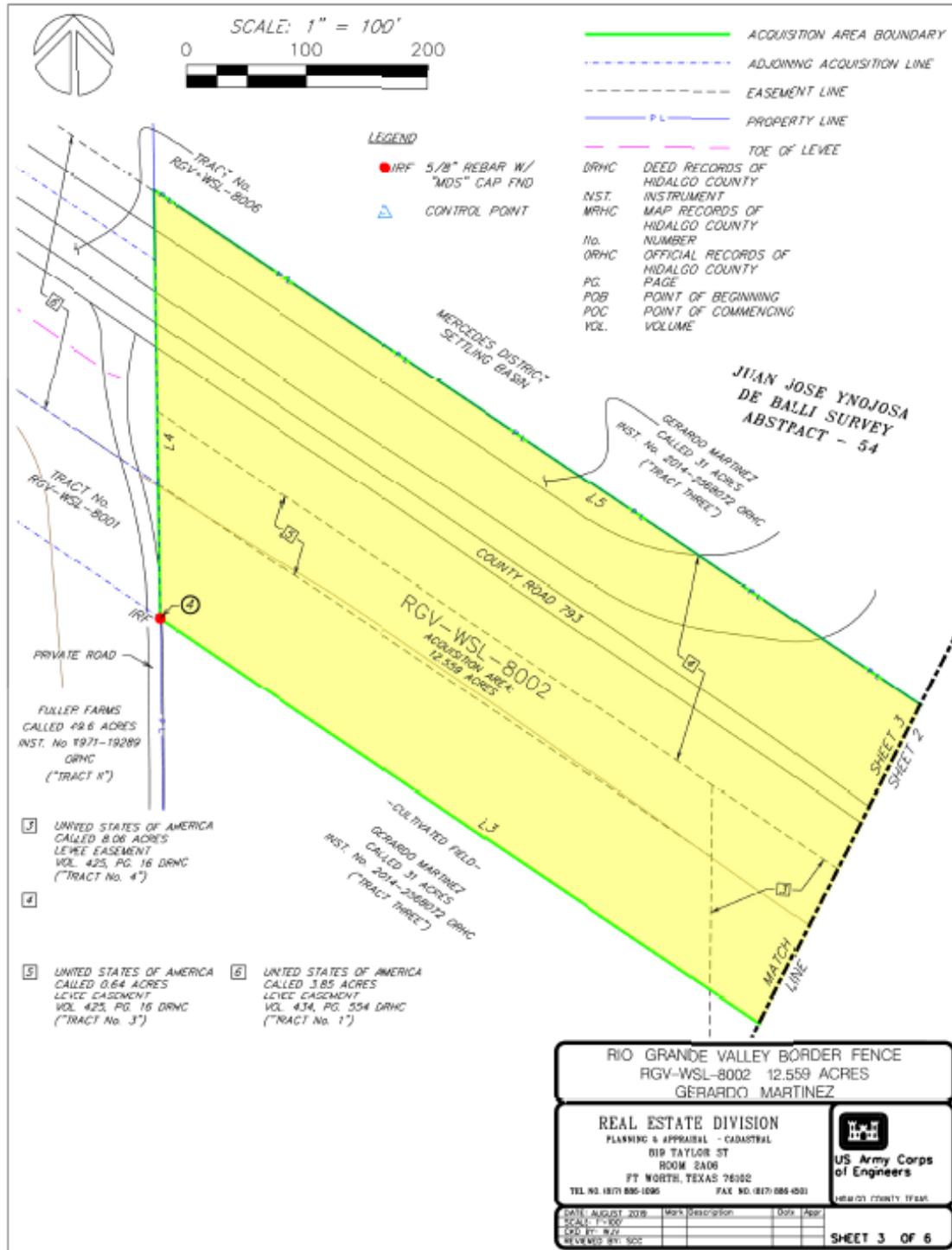
# **SCHEDULE**

# **D**

**SCHEDULE D****PLAT****LAND TO BE CONDEMNED**

**SCHEDULE D (Cont'd)**

**SCHEDULE D (Cont'd)**



## LAND TO BE CONDEMNED

**SCHEDULE D (Cont'd)**

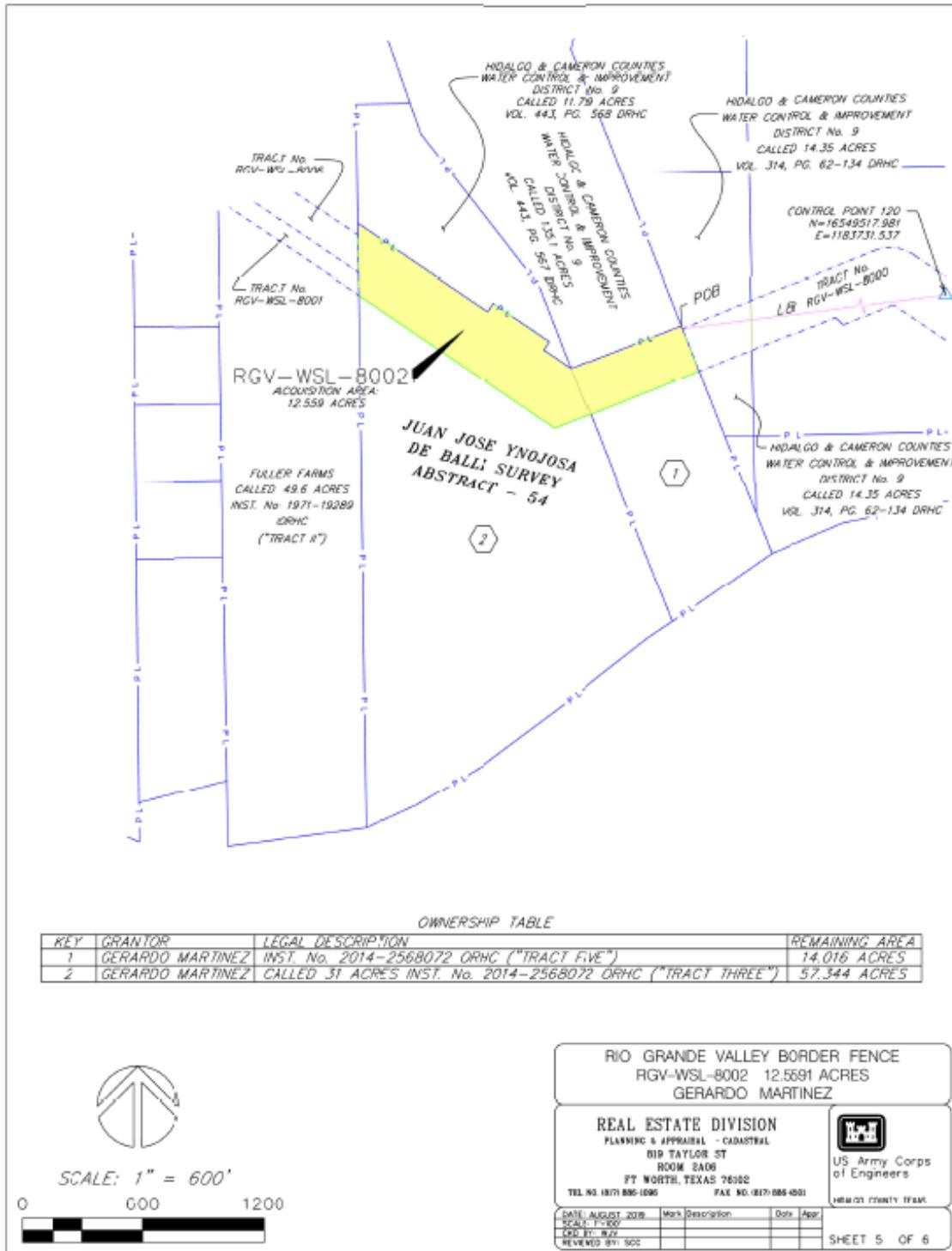
LINE	BEARING	DISTANCE	REC-BEARING	REC-DISTANCE
L1	S 21°30' 00" E	244.07'	SOUTHEASTERLY	N/A
L2	S 68°18'46" W	770.98'	N/A	N/A
L3	N 33°59'00" W	1186.23'	N/A	N/A
L4	N 00°50'00" W	355.61'	N/A	N/A
L5	S 56°06'00" E	785.10'	N/A	N/A
L6	N 33°54'00" E	50.00'	N/A	N/A
L7	S 56°06'00" E	340.00'	N/A	N/A
L8	S 33°54'00" W	50.00'	N/A	N/A
L9	S 56°06'00" E	164.50'	N/A	N/A
L10	N 68°42'15" E	581.38'	N/A	N/A

COORDINATE TABLE

MONUMENT NO.	NORTHING	EASTING	MONUMENT NAME
1	16548942.198	1179447.651	RGV-WSL-8002-1
2	16548715.219	1179537.365	RGV-WSL-8000-48-8002-2
3	16548470.310	1178820.957	RGV-WSL-8002-3
4	16549133.927	1177837.721	RGV-WSL-8001-1-8002-4

RIO GRANDE VALLEY BORDER FENCE RGV-WSL-8002 12.559 ACRES GERARDO MARTINEZ		
REAL ESTATE DIVISION PLANNING & APPRAISAL - CADASTRAL 819 TAYLOR ST ROOM 2400 FT WORTH, TEXAS 76102 TEL NO. (817) 886-1096 FAX NO. (817) 886-4581		
 US Army Corps of Engineers WELLINGTON COUNTY TEAM		
DATE: AUGUST 2010	Mark Description	Copy Acre
SCALE: 1:3000		
CRD BY: WAZ		
REVIEWED BY: WAZ		
SHEET 4 OF 6		

LAND TO BE CONDEMNED

**SCHEDULE D (Cont'd)****LAND TO BE CONDEMNED**

# **SCHEDULE**

# **E**

**SCHEDULE E**

**ESTATE TAKEN**

Hidalgo County, Texas

Tract: RGV-WSL-8002

Owner: Gerardo Martinez, *et al.*

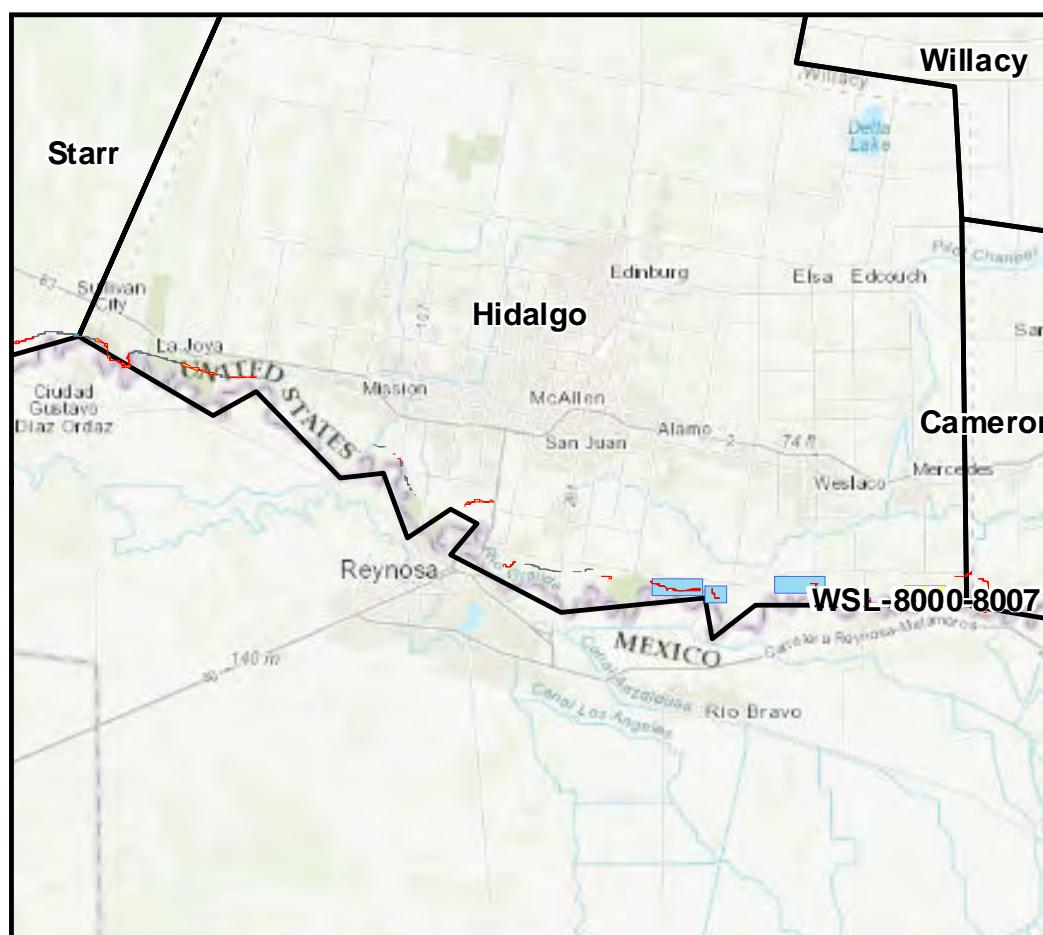
Acres: 12.559

The estate taken is fee simple, subject to existing easements for public roads and highways, public utilities, railroads, and pipelines; and subject to all interests in minerals and appurtenant rights for exploration, development, production and removal of said minerals;

Reserving to the owners of the lands identified as "Tract Three" and "Tract Five" in Schedule C and Schedule D reasonable access to and from the owners' lands lying between the Rio Grande River and the border barrier through opening(s) or gate(s) in the border barrier between the westernmost mark labeled "Beginning" and the easternmost mark labeled "Ending" depicted on the map below;

Excepting and excluding all interests in water rights and water distribution and drainage systems, if any, provided that any surface rights arising from such water rights or systems are subordinated to the United States' construction, operation and maintenance of the border barrier.

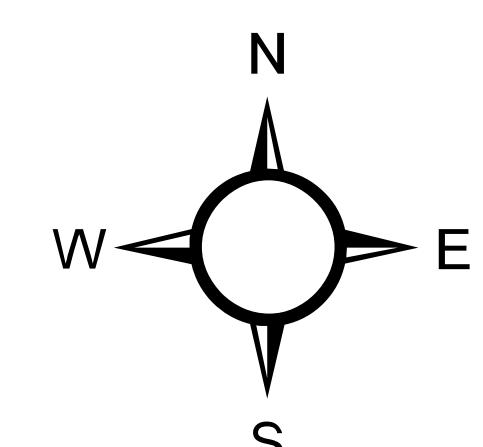
**Border Infrastructure Project**  
**RGV-02**  
**WSL-8000-8007**



**Hidalgo County,  
Texas**

**Legend**

- Tracts
- ParentTracts



0 900 1,800  
1 inch = 456 feet  
Warning: This document is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (S U.S.C. § 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official.

# **SCHEDULE**

# **F**

**SCHEDULE F**

**ESTIMATE OF JUST COMPENSATION**

The sum estimated as just compensation for the land being taken is NINETY THREE THOUSAND FOUR HUNDRED AND FORTY NINE DOLLARS AND NO/100 (\$93,449.00), to be deposited herewith in the Registry of the Court for the use and benefit of the persons entitled thereto.

# **SCHEDULE**

# **G**

**SCHEDULE G****INTERESTED PARTIES**

The following table identifies all persons who have or claim an interest in the property condemned and whose names are now known, indicating the nature of each person's property interest(s) as indicated by references in the public records and any other information available to the United States. *See Fed. R. Civ. P. 71.1(c).*

Interested Party	Reference
<b>Gerardo Martinez</b>  San Antonio, TX 78253	Gift Warranty Deed, Document # 2014-2568072, recorded December 03, 2014, Deed Records of Hidalgo County
	Gift Warranty Deed, Document # 2007-1742289, recorded April 3, 2007, Deed Records of Hidalgo County
<b>Marvin Fuller</b>  Weslaco, TX 78596	Tenant
<b>Hidalgo County Tax Assessor &amp; Collector</b> <b>Pablo "Paul" Villareal, Jr.</b> 2804 S. Business Hwy. 281 Edinburg, TX 78539	Property Taxes

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff Bexar  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
N. Joseph Unruh, United States Attorney's Office, Southern District of Texas, 1701 West Bus. Hwy. 83, Ste. 600, McAllen, TX 78501

## DEFENDANTS

12.559 Acres of Land, More or Less, Situate in Hidalgo County, State of Texas; and Gerardo Martinez, Et. Al.

County of Residence of First Listed Defendant Bexar  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>		
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<b>Habeas Corpus:</b>	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<b>Other:</b>		<input type="checkbox"/> 896 Arbitration
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
		<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
		IMMIGRATION		
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 465 Other Immigration Actions		
		FEDERAL TAX SUITS		
		<input type="checkbox"/> 790 Other Labor Litigation		
		<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
---	---	--	---	--	--	---

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
40 U.S.C. 3113 and 3114

## VI. CAUSE OF ACTION

Brief description of cause:  
Land condemnation proceeding for fee simple interest to construct, install, operate, and maintain border security

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND S CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/06/2019



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG. JUDGE